



April 11, 2001

Ms. Cynthia B. Garcia
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2001-1452

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145864.

The City of Fort Worth (the "city") received two requests for two specified police officers' training and certifications with radar devices, lists of requirements to operate and issue citations with radar devices, radar device operation manuals, as well as the last time one radar device was updated, serviced, or calibrated. The requestor also asks for a list of any impairing factors to the radar devices, makes and models of the devices in question, and a copy of the city charter agreement authorizing the city to write citations on State Highway 820. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim.

You state that questions are not covered under the Public Information Act (the "Act") and, therefore, the city will not be providing this information to the requestor. The Act does not require a governmental body to prepare answers to questions or to do legal research. *See* Open Records Decision Nos. 563 at 8 (1990), 555 (1990). However, a governmental body must make a good faith effort to relate a request to information that it holds. Open Records Decision No. 561 (1990). Although the requestor places question marks behind most of his requests, he is asking for specific information, such as the officers' training and certifications, the operation manuals, and a list of requirements to operate radar devices and issue citations. To the extent that the requested information exists in documents held by the city, the city must make these documents available to the requestor.

However, the Act only applies to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. Thus, the Act does not require a governmental body to prepare new information in response to a request. *See* Open Records Decision No. 452 at 2-3 (1986). Therefore, you need not release the requested city charter agreement if it does not exist.

Further, you need not provide the requested information if it does not exist in documents possessed by the city.

In this instance, you have prepared answers for the requested information, rather than submitting the responsive records. The Act, however, requires a governmental body to provide a copy of the actual requested record. *See* Open Records Decision No. 606 (1992). The Act does not permit a governmental body to provide the requestor with a new document that contains the requested information. *Id.* However, the governmental body and the requestor may agree that the governmental body will provide a new document instead of the requested information. *Id.* You have not indicated that the requestor has agreed to receipt of the new document.

Section 552.301(e)(1) requires a governmental body to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D), (2). Because you have failed to submit the actual requested records, such as the certifications and operations manual, we conclude that you failed to comply with section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You argue that the requested information is excepted under section 552.103 of the Government Code. Section 552.103 is a discretionary exception under the Act and is not a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). Thus, the requested information may not be withheld under section 552.103.

With regard to the operations manual, you state that it cannot be provided due to copyright laws. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). However, a governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Therefore, if the city has a copy of the operations manual, it must allow inspection of this manual.

In conclusion, the city must release any records which contain responsive information and allow access to the operations manual.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

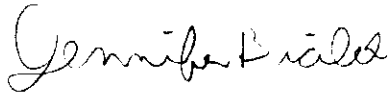
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 145864

Encl: Submitted documents

cc: Mr. Roben D. Jones
10712 Lone Pine Lane
Fort Worth, Texas 76108
(w/o enclosures)